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May 18, 2004

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ALSO ADMITTED IN MARYLAND

Ms. Charla Dillon, Docket Clerk  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Via FedEx

Re: Response to Motion to Expedite; Docket No. 03-00329

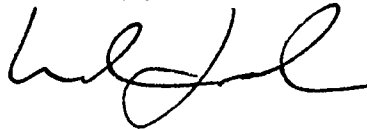
Dear Ms. Dillon:

Enclosed is an original and 14 copies of East Sevier County Utility District's Response to the Motion to Expedite Status Conference and Hearing previously filed by Tennessee Wastewater Systems, Inc. in the above-referenced case. Please return the extra copy to me in the self-addressed, postage paid envelope once it is file-stamped

By copy of this letter and the enclosure, the Response is being served on counsel to Tennessee Wastewater Systems, Inc and counsel to the City of Pigeon Forge.

Thank you very much for your help. If you have any questions, please call.

Very truly yours,



Mark Jendrek

Enclosures

cc: Donald L. Scholes  
G. Scott Thomas  
East Sevier County Utility District

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE:	)	
	)	
PETITION OF ON-SITE SYSTEMS, INC.	)	
TO AMEND ITS CERTIFICATE OF	)	
CONVENIENCE AND NECESSITY	)	
	)	Docket No. 03-00329 and
and	)	Docket No. 04-00045
	)	Consolidated
PETITION OF TENNESSEE WASTEWATER	)	
SYSTEMS, INC. TO AMEND ITS CERTIFICATE	)	
OF CONVENIENCE AND NECESSITY	)	

**RESPONSE OF EAST SEVIER COUNTY UTILITY DISTRICT TO  
MOTION TO EXPEDITE STATUS CONFERENCE AND HEARING  
FILED BY TENNESSEE WASTEWATER SYSTEMS, INC.**

Comes now East Sevier County Utility District ("District"), by and through counsel, and, in response to the Motion to Expedite Status Conference and Hearing ("Motion to Expedite") filed by Tennessee Wastewater Systems, Inc. ("Tennessee Wastewater") on May 4, 2004, states as follows:

This District takes specific issue with the matter asserted by Tennessee Wastewater in Footnote 1 of the Motion to Expedite. Footnote 1 reads, in its entirety, "Because the Authority only granted a Petition to Intervene in Docket No. 03-00329, the company believes that it has a certificate to serve the area set forth in Docket No. 03-00329 until the Authority takes action to the contrary in this consolidated docket." For the convenience of the hearing officer, a copy of the Motion to Expedite is attached hereto as Exhibit A.

The Authority did not “only grant a Petition to Intervene” in Docket No. 03-00329, but also granted the District’s Petition to Reconsider. Tennessee Wastewater is presumably asserting, by the language in its footnote, that the Petition to Reconsider was not granted. Such is not the case.

Attached hereto as Exhibit B is a page from the transcript of the proceedings before the Authority on April 26, 2004. The incomplete paragraph at the top of the page contains the motion made by Director Miller, which includes the following language: “That we grant the East Sevier County Utility District’s petition to intervene and its petition for reconsideration, that we also . . . .”

Additionally, the full paragraph provides, in part, “. . . that’s enough reason to grant the intervention, the motion to reconsider, ask the chair to consolidate these and we hear them together . . . .”

Clearly the District’s Petition for Reconsideration was granted which, by law, has the effect of vacating the order being reconsidered. Contrary to the assertion in Footnote 1, Tennessee Wastewater does not have a certificate to serve the area set forth in Docket No. 03-00329, and should not proceed as if it does.

The District does not object to an expedited hearing schedule to the extent such a schedule imposes no hardship on the District or on the City of Pigeon Forge, or such parties’ respective counsel. A full and complete resolution of these issues should not take a back seat to any time bind in which Tennessee Wastewater has put itself by its premature actions.

The District does, however, object to Tennessee Wastewater's asserted bases for the expedited hearing. As the District has consistently maintained through this matter, the situation in which Tennessee Wastewater finds itself is the result of action taken (or failed to be taken) by Tennessee Wastewater. That Tennessee Wastewater chose not to give notice to the District of its initial petition is not the District's fault, nor is it the fault of the City of Pigeon Forge. That Tennessee Wastewater chose to take an unprecedented approach to obtaining an amendment to its Certificate of Convenience and Necessity is Tennessee Wastewater's choice. Tennessee Wastewater cannot now be heard to complain that this unprecedented, novel approach is taking longer than it otherwise would have, had it continued the approach taken by others in this industry.

That is, Tennessee Wastewater knew or should have known that trying to capture an entire county, where others are ready, willing, and able to provide wastewater treatment services, and are already providing such services, would adversely affect the rights of others, generate controversy, and take time. Nevertheless, This approach was taken as opposed to requesting an amendment for a specific development, where the need is obvious and where amendments are routinely approved.

Those adversely affected have a right to be heard, whether Tennessee Wastewater provided notice or not, which should have been anticipated by Tennessee Wastewater when it chose this approach.

Additionally, that Tennessee Wastewater chose to act prematurely, that is, prior to the issuance of the Authority's order and the finality thereof, is neither the fault of the

District nor the Authority, but the fault of Tennessee Wastewater. No order is final until it is beyond reconsideration and appeal, and Tennessee Wastewater acted at its peril when it governed itself otherwise. It cannot now be heard to complain of a hardship it brought on itself.

Wherefore, East Sevier County Utility District objects to Tennessee Wastewater's characterization of the Authority's action on April 26, to the extent Tennessee Wastewater is asserting that the District's Petition to Reconsider was not granted.

East Sevier County Utility District further objects to an expedited schedule to the extent such a schedule would cause a hardship to East Sevier County Utility District or its counsel.

Finally, East Sevier County Utility District objects to Tennessee Wastewater's conclusion that it currently holds a Certificate of Convenience and Necessity to the area contemplated in its Petition in Docket No. 03-00329 as the grant of East Sevier County Utility District's Petition for Reconsideration has the effect of vacating the order being reconsidered.

Respectfully submitted this 18<sup>th</sup> day of May, 2004.



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Mark Jendrek, #12993  
MARK JENDREK, P.C.  
P.O. Box 549  
Knoxville, Tennessee 37901  
865/824-1900  
Attorney for East Sevier County Utility District

OF COUNSEL:

Charles B. Welch, Jr., #21747  
FARRIS, MATTHEWS, BRANAN,  
BOBANGO & HELLEN, PLC  
618 Church Street, Suite 300  
Nashville, Tennessee 37219  
615/726-1200  
Attorneys for East Sevier County Utility District

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document has been served upon the following persons by hand delivery or by United States Mail, with proper postage thereon.

G. Scott Thomas  
Bass, Berry & Sims, PLC  
AmSouth Center  
315 Deaderick Street, Suite 2700  
Nashville, Tennessee 37238

Donald L. Scholes  
Branstetter, Kilgore, Stranch & Jennings  
227 Second Avenue North, 4th Floor  
Nashville, Tennessee 37201-1631

This 18<sup>th</sup> day of May, 2004.

  
\_\_\_\_\_  
Mark Jendrek

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**PETITION OF ON-SITE SYSTEMS, INC. TO  
AMEND ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY**

**Docket No. 03-00329**

**and**

**PETITION OF TENNESSEE WASTEWATER  
SYSTEMS, INC. TO AMEND ITS  
CERTIFICATE OF CONVENIENCE  
AND NECESSITY**

**Docket No. 04-00045**

**MOTION TO EXPEDITE STATUS CONFERENCE AND HEARING**

At the Authority Conference on April 26, 2004, the Authority voted to grant the Petition to Intervene of East Sevier County Utility District in Docket No. 03-00329.<sup>1</sup> Because the parties in Docket No. 03-00329 are the same as the parties in Docket No. 04-00045 and because similar issues are involved, the Authority voted to consolidate these two dockets. Prior to the Authority Conference on April 26, 2004, Randall Gilliam had been appointed as hearing officer for Docket No. 04-00045. Therefore, the Authority appointed Mr. Gilliam as hearing officer for this consolidated docket.

The Authority granted the petition of On-Site Systems, Inc., now Tennessee Wastewater Systems, Inc., (the Company) in Docket No. 03-00329 on October 21, 2003. The Final Order

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<sup>1</sup> Because the Authority only granted a Petition to Intervene in Docket No. 03-00329, the Company believes that it has a certificate to serve the area set forth in Docket No. 03-000329 until the Authority takes action to the contrary in this consolidated docket

granting the Petition was not entered by the Authority until over five months later on March 24, 2004. The Company made inquiries to the Authority Staff about when the Final Order would be issued because the Company was negotiating with developers who were ready to get their developments approved about sewer service. The Company was assured that the Final Order would be issued soon.

Based upon the action taken at the October 21, 2003 and the subsequent assurances from the Authority Staff, the Company began to discuss the provision of sewer service with developers in Sevier County who needed sewer service for their developments. The owner of the Legacy Mountain development in Sevier County has proceeded with the design of the sewer system based upon the action taken on October 21, 2003. The Company has a verbal agreement with the developer of a development known as Trailhead for an 80 unit condo project in Sevier County.

By granting the intervention of East Sevier County Utility District in Docket No. 03-00329, the Authority has placed the Company and these developers in a precarious position in regard to sewer service to these developments. The developers of the Legacy Mountain and Trailhead developments have proceeded with the process to obtain approval their developments and have expended additional money on these projects based upon the Authority's action taken on October 21, 2003. These developers are very concerned about a delay in their projects as a result of the grant of the intervention of East Sevier County Utility District in Docket No. 03-00329.

Therefore, the Company requests that the Hearing Officer proceed as quickly as possible with the status conference on this consolidated docket and with a hearing, if he deems a hearing must be held, in this consolidated docket. These developers must have assurance that sewer

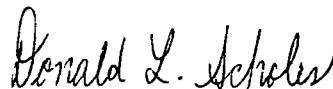
service is available for their developments. They have already expended funds to have the developments approved based upon the availability of sewer service as granted by the Authority on October 21, 2003.

In addition, the Company has verbally agreed to provide sewer service to developments known as Starr Crest II, Phase 4, Black Bear Ridge, Laurel Branch North, Legacy Homes Barnes site and Timber Tops Rental Center pending a decision in Docket No. 04-00045. Unless the Authority acts in this docket in a timely fashion, these developers will not be able to move forward with their projects.

Therefore, the Company requests that a status conference be held in this consolidated docket as soon as possible and that the Hearing Officer set a schedule to have any hearing deemed necessary in this case set as soon as possible.

Dated this 4th day of May, 2004.

Respectfully submitted,



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DONALD L. SCHOLES, # 10102  
Branstetter, Kilgore, Stranch & Jennings  
227 Second Avenue North, 4th Floor  
Nashville, Tennessee 37201-1631  
(615) 254-8801 - Telephone  
Attorney for Tennessee Wastewater Systems, Inc.

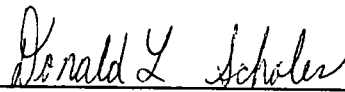
### CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing Motion has been served upon the following persons on this 4th day of May, 2004 by U.S. Mail, postage prepaid:

Mark Jendrek  
Mark Jendrek P.C.  
Post Office Box 549  
Knoxville, TN 37901

Charles B. Welch, Jr.  
Farris, Matthews, Branan, Bobango & Hellen, PLC  
618 Church Street, Suite 300  
Nashville, TN 37219

G. Scott Thomas  
Bass, Berry & Sims, PLC  
AmSouth Center  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238

  
\_\_\_\_\_  
DONALD L. SCHOLES

0001

1

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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TRANSCRIPT OF

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EXCERPT OF AUTHORITY CONFERENCE

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Monday, April 26, 2004

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11 APPEARANCES:

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For Tenn. Wastewater: Mr. Don Scholes

Mr. Charles Pickney

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For East Sevier Co. Mr. Chuck Welch

Utility District: Mr. Mark Jendrek

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For TRA Staff: Ms. Sharla Dillon

Mr. Aster Adams

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Reported By: Carol A. Nichols, RDR, CRR, CCR

EXHIBIT B

1 determining that it is in the interest of justice, I  
2 would like to recommend or offer the following motion:  
3 That we grant the East Sevier County Utility District's  
4 petition to intervene and its petition for  
5 reconsideration, that we also request that the chair  
6 consolidate this with docket number 04-00045 in order  
7 that they can be dealt with together, and they would be  
8 consolidated under this docket because I believe it's  
9 the first in time, and I'd also move that we deny East  
10 Sevier County Utility District's motion for leave to  
11 file a reply.

12 On-Site Systems is a good corporate  
13 citizen of this state -- I'm sorry. Tennessee  
14 Wastewater. Sorry, Mr. Pickney. I can't get used to  
15 that. But they're a good corporate citizen. They  
16 provide a service that otherwise is not provided in the  
17 state, but here we have a unique situation. We have an  
18 instrumentality of Sevier County saying that they want  
19 to provide that service, and I think that's enough  
20 reason to grant the intervention, the motion to  
21 reconsider, ask the chair to consolidate these and we  
22 hear them together and see if we can get to the bottom  
23 of this.

24 DIRECTOR KYLE: I second.

25 DIRECTOR JONES: Director Miller, I